



**December 15, 2010**

**TO: Co-Chairpersons Senator John Kibbie and Representative Helen Miller, and  
Members of the Levee and Drainage District Law Study Committee**

**FROM: Doug Adkisson, Senior Legal Counsel, Legislative Services Agency**

**RE: Background Information — Drainages and Levee Law**

**A. GENERAL**

Drainage systems are created to remove excess water from the soil profile and especially cropland by the construction of facilities utilizing gravity or pumps, and usually associated with a series of underground pipes (drains or tile) or open ditches or culverts, while levees are constructed as barriers, usually constructed along the top bank of a stream to protect adjacent land from surface water overflow during high water periods.

**1. Iowa Constitution**

In 1908, Article I, Sec. 18 of the Iowa Constitution, relating to the government's eminent domain powers and restrictions, was amended to provide:

*The general assembly, however, may pass laws permitting the owners of lands to construct drains, ditches, and levees for agricultural, sanitary or mining purposes across the lands of others, and provide for the organization of drainage districts, vest the proper authorities with power to construct and maintain levees, drains and ditches, and to keep in repair all drains, ditches, and levees heretofore constructed under the laws of the state, by special assessments upon the property benefited thereby...*

**2. Iowa Statutory Law**

Code chapter 468 provides procedures to organize and manage a "levee and drainage district" (herein referred to as district) for the benefit of persons owning the affected land. Iowa law provides that the drainage of surface waters from agricultural lands and all other land or the protection of such lands from overflow "shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare."<sup>1</sup>

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<sup>1</sup> Iowa Code §468.2(1).

## **B. ORGANIZATION**

### **1. Establishment**

Two or more persons owning contiguous land can petition their respective county board of supervisors to create a district.<sup>2</sup> After conducting an investigation, the board must conduct a cost-benefit analysis either to dismiss the petition or establish the district, approve the construction of ditches, drains, embankments, settling basins, and pumping stations; and acquire rights-of-way including by permanent easements as necessary.<sup>3</sup> The board must dissolve the proposed district if a majority of persons owning 70 percent of land in the district file an objection referred to as a “remonstrance”<sup>4</sup> or if no progress toward construction has been made for two or more years.<sup>5</sup>

### **2. Governance**

An established district is managed by a “board” which is the county board of supervisors for a district established in one county, the joint boards of supervisors in a district which crosses county lines (intercounty districts), or by the district’s landowners acting through an elected board of trustees.<sup>6</sup>

## **C. REPAIRS AND IMPROVEMENTS**

Once established, a structure in a district may be repaired or improved. An improvement means a facility such as a ditch or tile that has been previously constructed is expanded or enlarged to accommodate a greater design capacity.<sup>7</sup> The board may approve repairs or improvements to the district. The board must first conduct a hearing when the estimated cost of a repair exceeds \$20,000 or 75 percent of the original district cost, or the estimated cost of the improvement exceeds \$20,000 or 25 percent of the original cost.<sup>8</sup> There is no right of remonstrance for a proposed repair. In the case of an improvement, the board may order a reclassification.<sup>9</sup> Landowners, owning more than 70 percent of the total land in the district may file a remonstrance of the improvement if the estimated cost exceeds \$25,000 or the original cost of the district.<sup>10</sup>

## **D. ANNEXATION**

A board, acting alone or pursuant to a petition, may annex land that is contiguous to the district without regard to county lines, if it determines that the land to be annexed is benefited by an improvement, is receiving a benefit from the district, or will be benefited by a repair or improvement.<sup>11</sup> Further, the right of remonstrance does not apply to landowners being involuntarily annexed to an established district.<sup>12</sup>

## **E. STATE-OWNED LAND**

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<sup>2</sup> Iowa Code § 468.6.

<sup>3</sup> Iowa Code § 468.27.

<sup>4</sup> Iowa Code § 468.28. For dissolution of established districts, see Iowa Code §§ 468.250–468.261.

<sup>5</sup> Iowa Code § 468.29.

<sup>6</sup> See Iowa Code § 468.3(2).

<sup>7</sup> Iowa Code § 468.126(4).

<sup>8</sup> Iowa Code §§ 468.126(1) and 468.126(4)(a).

<sup>9</sup> Iowa Code § 468.126(4)(a).

<sup>10</sup> Iowa Code § 468.126(4)(b).

<sup>11</sup> Iowa Code § 468.119(1).

<sup>12</sup> Iowa Code § 468.119(4).

With permission of the controlling state agency, a district may include an easement in land owned by the state of Iowa. The permission cannot be unreasonably withheld.<sup>13</sup> The state is responsible for all assessments against the state land. When the state-owned land is controlled by the Department of Natural Resources, the board may assess the amount against the land which is payable upon order by the Executive Council from moneys in the General Fund of the State.<sup>14</sup>

## **F. CLASSIFICATION AND ASSESSMENT OF LAND WITHIN A DISTRICT**

The board classifies land located within the district for purposes of determining each landowner's assessed amount. The assessed amount is based on the availability of the improved land rather than its actual utilization. Generally, assessments are calculated on a proportional or "graduated" scale equitably apportioned according to the benefit received by land classification. The classifications are based on tracts of 40 acres or less. First, the tract receiving the greatest benefit is assessed at a rate of 100 percent. Second, every other tract which is assessed by comparison is classified at a rate of less than 100 percent.<sup>15</sup> A payment may be made in installments with interest over the course of multiple years.<sup>16</sup> The original assessed value of a tract set when the district was established is the basis for all future assessments, unless the district is reclassified.<sup>17</sup> The assessment constitutes a lien upon the real property subject to the assessment.<sup>18</sup>

## **G. FINANCING**

Assessments are levied as a tax against each benefited tract together with interest and are kept under the control of the county treasurer.<sup>19</sup> Generally, the moneys are kept in the County Drainage or Levee Fund.<sup>20</sup> The board orders expenditures of moneys in the fund to support construction and after expenses have been paid may refund the owner up to 50 percent of their proportionate share of the surplus or retain the surplus in a sinking fund to pay for future expenses.<sup>21</sup>

## **H. CONCLUSION**

There are limited sources of information regarding drainage law. One helpful but somewhat outdated resource is the 2005 edition of the *Iowa Drainage Law Manual* sponsored by the Iowa Highway Research Board and the Iowa Department of Transportation and maintained by Iowa State University on its Center for Transportation Research and Education web site:

[http://www.ctre.iastate.edu/pubs/drainage\\_law/index.htm](http://www.ctre.iastate.edu/pubs/drainage_law/index.htm) (last visited December 14, 2010).

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<sup>13</sup> Iowa Code § 468.220.

<sup>14</sup> Iowa Code § 468.43.

<sup>15</sup> Iowa Code § 468.39. The classification may also be based on other factors including special common outlet classifications. See Iowa Code § 468.38.

<sup>16</sup> Iowa Code § 468.57.

<sup>17</sup> Iowa Code § 468.49.

<sup>18</sup> Iowa Code § 468.51.

<sup>19</sup> Iowa Code §§ 468.52, 468.53, and 468.528.

<sup>20</sup> Iowa Code § 468.54.

<sup>21</sup> Iowa Code § 468.61.